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DEPARTMENT OF THE INTERIOR**Office of the Secretary****43 CFR Part 10**

RIN 1024-AC07

Native American Graves Protection and Repatriation Act Regulations**AGENCY:** Department of the Interior.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: By this action we are publishing proposed regulations for implementing the Native American Graves Protection and Repatriation Act of 1990. These regulations are mandated by Native American Graves Protection and Repatriation Act of 1990 and their publication is intended to solicit comments from Indian tribes, Federal agencies, museums and members of the public prior to publishing the regulations in final form. These regulations develop a systematic process for determining the rights of lineal descendants and members of Indian Tribes and Native Hawaiian organizations to certain Native American human remains and cultural items with which they are affiliated.

DATES: Written comments will be accepted until July 27, 1993.

ADDRESSES: Comments on the proposal are to be marked "Docket No. 1024-AC07" and mailed in duplicate to Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, Box 37127, Washington DC 20013-7127; or delivered in duplicate to room 210, 800 North Capital Street, Washington DC. Comments may be inspected at room 210 on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, Box 37127, Washington DC 20013. Telephone: (202) 343-4101. Fax: (202) 523-1547.

SUPPLEMENTARY INFORMATION:**Background**

On November 16, 1990, President George Bush signed into law the Native American Graves Protection and Repatriation Act, hereafter referred to as the Act. The Act addresses the rights of lineal descendants and members of Indian Tribes and Native Hawaiian organizations to certain Native American human remains and cultural

items with which they are affiliated. Section 13 of the Act requires the Secretary of the Interior to promulgate regulations to carry out provisions of the Act. Readers are reminded that the requirements of the Act, including all deadlines, apply regardless of the effective date of these regulations.

These regulations consist of 17 sections divided into four subparts and five appendices. Subpart A includes introductory sections outlining the purpose and applicability of these regulations and presenting definition of 31 key terms. Subpart B includes procedures implementing section 3 of the Act related to the intentional excavation and inadvertent discovery of human remains or cultural items from Federal or Tribal lands. Subpart C includes procedures implementing sections 5, 6, and 7 of the Act for conducting summaries and inventories and repatriating human remains or cultural items in museums or Federal collections. Subpart D includes general procedures for determining lineal descent and cultural affiliation, operation of the Review Committee, and resolving disputes. Appendices A through E include documents to clarify the procedures outlined in earlier subparts. Section 4 of the Act, which deals with illegal trafficking and is incorporated directly into chapter 53 of title 18, United States Code, does not require implementing regulations.

Section by Section Analysis**Section 10.1**

This section outlines the purpose and applicability of the regulations.

Section 10.2

This section defines terms used throughout the regulations. The 31 definitions are grouped into five categories concerning: (a) Participants, (b) human remains and cultural items, (c) cultural affiliation, (d) location, and (e) procedures.

Subsection (a) defined fifteen principal organizations and individuals who implement or are referenced in these regulations. Definitions of "museum" and "Indian Tribe" have been expanded to clarify the statutory language. For "museum," additional clarification and an example are included to elaborate the meaning of "receives Federal funds."

The definition of Indian Tribe has been clarified to refer to those Indian Tribes and Native Alaskan entities on the current list of recognized Indian tribes as published by the Bureau of Indian Affairs. The definition of Indian Tribe used in the Act was explicitly

drawn from the American Indian Self Determination and Education Assistance Act (25 U.S.C. 450b) which is interpreted to refer to only those Indian Tribes and Native Alaskan entities recognized by the Bureau of Indian Affairs. This definition is also consistent with the regulatory definition of the term "Indian Tribe" (43 CFR 7.3(f)) as developed in connection with the Archaeological Resources Protection Act ("ARPA"), 16 U.S.C. 470aa et seq. For use in these regulations, the term "Indian Tribe" includes Native Hawaiian organizations. Comment is particularly invited as to the proposed definition of the term "Indian Tribe."

Subsection (b) defines the types of human remains and objects covered by the regulations. "Human remains," which were not defined by the Act, are defined broadly to include all Native American human remains with exceptions for remains or portions of remains freely given by the individual from whom they were obtained and for remains incorporated into cultural items. Comment is requested particularly on the sentence in the definition which defines human remains that have been incorporated into a cultural item as part of that cultural item, rather than as human remains.

"Cultural item" is used in a slightly different way than in the Act, referring here only to funerary objects, sacred objects, and objects of cultural patrimony, and not to human remains. This different usage, however, is only editorial and does not alter the requirements of the Act with respect to treatment of human remains and other cultural items. This modified usage is intended to address the offense some individuals have expressed over referring to human remains as "items." The definitions of "sacred objects" and "objects of cultural patrimony" have been elaborated to incorporate language from the House and Senate Committee reports relating to the Act.

Subsection (c) reiterates the statutory definition of "cultural affiliation."

Subsection (d) defines three types of property on which human remains or cultural items are discovered or excavated. The statutory definition of "Federal lands" has been elaborated to clarify that "control" refers to "those lands in which the United States has a legal interest sufficient to permit it to apply these regulations without abrogating the otherwise existing legal rights of a person." The statutory definition of "Tribal lands" has been elaborated to clarify that the regulations do not apply to strictly private land located within the boundaries of an

Indian reservation but do apply to allotments held in trust or subject to a restriction on alienation by the United States." The Act's legislative history supports the interpretation that the Congress did not intend the Act to apply to private lands within the boundaries of an Indian reservation. The definition of "aboriginal lands" is derived from statutory language.

Subsection (e) defines six processes that are required to implement these regulations.

Section 10.3

This section presents requirements and procedures for implementing section 3 (c) of the Act related to treatment and determining ownership and control of human remains and cultural items that are intentionally excavated from Federal or Tribal lands after November 16, 1990. The section describes the actions that Federal agency officials must take to consult with Indian Tribes and to ensure proper treatment of human remains and cultural items prior to turning them over to appropriate lineal descendant or Indian Tribe. Section 10.3 (c)(3) urges Federal agency officials to coordinate consultation requirements and any subsequent agreement for compliance under Section 106 of the National Historic Preservation Act (16 U.S.C. 470 et seq.) with these regulations. Section 10.3 (c)(4) urges Indian Tribes to follow these regulations regarding treatment and disposition of human remains or cultural items excavated on Tribal lands.

Section 10.4

This section presents procedures for implementing section 3 (d) of the Act related to determining ownership and control of human remains and cultural items that are discovered inadvertently on Federal or Tribal lands after November 16, 1990. Section 10.4 (e) outlines procedures for avoiding or shortening the required cessation of activity through execution of a written, binding agreement between the necessary parties. Section 10.4 (f) urges Indian Tribes to follow these regulations regarding disposition of human remains or cultural items discovered on Tribal lands. Section 10.4 (f) urges Federal agency officials to coordinate their responsibilities under this section with their emergency discovery responsibilities under section 106 of the National Historic Preservation Act (16 U.S.C. 470f, 36 CFR 800.11) or the Archeological and Historic Preservation Act (16 U.S.C. 469 (a-c)).

Section 10.5

This section presents consultation requirements applicable to both intentional excavations and inadvertent discovery of human remains or cultural items on Federal lands or Tribal lands after November 16, 1990.

Section 10.6

This section presents the priority of ownership of human remains or cultural items excavated or discovered on Federal lands or Tribal lands after November 16, 1990. The drafters point out that § 10.6 (a) explicitly recognizes Indian Tribes' sovereignty over human remains or cultural items excavated or discovered on Tribal land. Section 10.6(c) includes public notice requirements prior to the repatriation of human remains and cultural items discovered on Federal lands. This is considered to be required as a matter of due process of law although not specifically required by the Act.

Section 10.7

This section has been reserved for procedures for the disposition of unclaimed human remains and cultural items excavated or discovered on Federal lands or Tribal lands after November 16, 1990.

Section 10.8

This section presents procedures for implementing section 7 of the Act related to conducting summaries of collections which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony in the collections of Federal agencies or museums receiving Federal funds. The drafters point out that an ambiguity in the statutory language left it unclear whether summaries should include only those unassociated funerary objects, sacred objects, or objects of cultural patrimony which are culturally affiliated with a particular Indian Tribe or to the entire collection which may include such items. As the statute only requires consultation after completion of the summary, the latter interpretation has been chosen. Section 10.8(c) requires that summaries be completed no later than November 16, 1993. This deadline is statutorily established and applies regardless of the effective date of these regulations. The statutory language does not provide for extensions of this deadline. Section 10.8(e) requires the documentation of individual items and the determination of their cultural affiliation followed by public notification prior to repatriation of any individual items included within a summary. The drafters consider that public notice is required as a matter of

due process of law although the Act does not specifically so require.

Section 10.9

This section presents procedures for implementing section 5 of the Act related to conducting inventories of human remains and associated funerary objects in the collections of Federal agencies or museums receiving Federal funds.

Section 10.10

This section presents criteria for repatriating human remains and cultural items in the collections of Federal agencies or museums receiving Federal funds. Comment particularly is sought on § 10.10 (c)(3) which incorporates the drafters' understanding of the relationship between the Fifth Amendment of the United States Constitution and the Act's repatriation requirements. It is our interpretation that the Congress did not intend to have the Act result in the taking of private property within the meaning of the Fifth Amendment. This interpretation follows the usual rule of statutory construction to the effect that an Act of Congress is not to be construed as resulting in the taking of private property unless the Act clearly so indicates. The Act does not expressly state that a taking of property is intended, but, to the contrary, references the application of the Fifth Amendment at least in certain respects. The drafters, however, do not intend to suggest that there are many circumstances where a museum would be legally entitled to assert the Fifth Amendment as grounds to decline to repatriate human remains and cultural items as otherwise required by the Act.

Section 10.11

This section has been reserved for procedures for the disposition of culturally unidentifiable human remain in the collections of Federal agencies or museums receiving Federal funds.

Section 10.12

This section has been reserved for procedures for assessing civil penalties upon museums receiving Federal funds that fail to comply with provisions of these regulations.

Section 10.13

This section has been reserved for procedures for implementing provisions of these regulations after the November 16, 1995 deadline for inventory completion.

Section 10.14

This section presents general procedures for determining lineal

descent and cultural affiliation for human remains or cultural items either in the collections of Federal agencies or museums receiving Federal funds or excavated or discovered on Federal or Tribal lands. Section 10.14 (b) requires that a lineal descendant be able to trace his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian Tribe to a known (named) individual whose remains, funerary objects, or sacred objects are being requested. Section 10.14 (c) requires that determination of cultural affiliation includes existence of an identifiable present-day Indian Tribe, evidence of the existence of and identifiable earlier group, and evidence of the existence of a shared group identity that can be reasonably traced between the present-day Indian tribe and the earlier group.

Section 10.15

This section presents general limitations and remedies for repatriation of human remains or cultural items either in the collections of Federal agencies or museums receiving Federal funds or excavated or discovered on Federal or Tribal lands. Section 10.15 (b) has been reserved for procedures for dealing with human remains or cultural items that remain unclaimed after passage of the statutory deadlines.

Section 10.16

This section presents general provisions for the conduct of the seven member Review Committee appointed by the Secretary of the Interior from nominations submitted by Indian Tribes and Native Hawaiian organizations and national museum organizations and scientific organizations pursuant to section 8 of the Act.

Section 10.17

This section presents general provisions for the resolution of disputes including provisions for the involvement of the Review Committee.

Appendix A

This section contains a sample summary of collections containing unassociated funerary objects, sacred objects, or objects of cultural patrimony.

Appendix B

This section has been reserved for a sample inventory of human remains and associated funerary objects.

Appendix C

This section contains a sample notice of inventory completion.

Appendix D

This section has been reserved for a sample memorandum of understanding dealing with repatriation of human remains or cultural items in Federal collections.

Appendix E

This section has been reserved for a sample memorandum of understanding dealing with intentional excavations on Federal or Tribal lands.

Public Participation

Any person may obtain a copy of this NPRM by submitting a request to the Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, Box 37127, Washington DC 20013-7127, by calling (202) 343-4101, or by faxing a request to (202) 523-1547. Requests must identify the notice number of this NPRM.

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the effects that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commentors wishing the National Park Service to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No 1024-AC07." The postcard will be date stamped and returned to the commentor. All communications received on or before the closing date for comments will be considered by the Departmental Consulting Archeologist before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the rule Docket both before and after the closing date for comments.

Drafting Information

These proposed regulations were prepared by Dr. Francis P. McManamon (Departmental Consulting Archeologist, National Park Service), Dr. C. Timothy McKeown (NAGPRA Program Leader, National Park Service), and Mr. Lars Hanslin (Senior Attorney, Office of the Solicitor), in consultation with the Native American Graves Protection and Repatriation Review Committee as directed by section 8 (c)(7) of the Act.

Compliance with the Paperwork Reduction Act

The collections of information contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget. Public reporting burden for this collection of information is expected to average 100 hours for the exchange of summary/inventory information between a museum and an Indian Tribe and six hours per response for the notification to the Secretary of the Interior, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collected information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, Box 37127, Washington D.C. 20013 and to the Office of Management and Budget, Paperwork Reduction Project, Washington DC 20503.

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291.

The Department of the Interior certifies that this document does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Department of the Interior has determined that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b) of Executive Order No. 12278.

The Department of the Interior has determined that these proposed regulations will not have a significant effect on the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321-4347). In addition, the Department of the Interior has determined that these proposed regulations are categorically excluded from the procedural requirements of the National Environmental Policy Act by Departmental regulations in 516 DM 2. As such, neither an Environmental Assessment nor an Environmental Impact statement has been prepared.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Graves, Hawaiian Natives,

Historic preservation, Indians—claims, Indians—lands, Museums, Public lands, Reporting and record keeping requirements.

For the reasons set out in the preamble, 43 CFR Subtitle A is proposed to be amended as follows.

Part 10 is added to read as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

Subpart A—Introduction

Sec.

10.1 Purpose and applicability.

10.2 Definitions.

Subpart B—Human Remains or Cultural Items from Federal or Tribal Lands

10.3 Intentional excavations.

10.4 Inadvertent discoveries.

10.5 Consultation.

10.6 Ownership.

10.7 Disposition of unclaimed human remains and cultural items. [Reserved]

Subpart C—Human Remains or Cultural Items in Museums and Federal Collections

10.8 Summaries.

10.9 Inventories.

10.10 Repatriation.

10.11 Disposition of culturally unidentifiable human remains. [Reserved]

10.12 Civil penalties. [Reserved]

10.13 Future applicability. [Reserved]

Subpart D—General

10.14 Lineal descent and cultural affiliation.

10.15 Repatriation limitations and remedies.

10.16 Review committee.

10.17 Dispute resolution.

Appendix A to Part 10—Sample summary.

Appendix B to Part 10—Sample inventory. [Reserved]

Appendix C to Part 10—Sample notice of inventory completion.

Appendix D to Part 10—Sample memorandum of understanding repatriation. [Reserved]

Appendix E to Part 10—Sample memorandum of understanding intentional excavation. [Reserved]

Authority: 25 U.S.C. 3001 *et seq.*

Subpart A—Introduction

§ 10.1 Purpose and applicability.

(a) *Purpose.* These regulations implement provisions of the Native American Graves Protection and Repatriation Act of 1990 (Pub.L. 101-601; 25 U.S.C. 3001-3013; 104 Stat. 3048-3058). These regulations develop a systematic process for determining the rights of lineal descendants and members of Indian Tribes and Native Hawaiian organizations to certain Native American human remains and

cultural items with which they are affiliated.

(b) *Applicability.* (1) These regulations pertain to the identification and appropriate disposition of human remains and cultural items that are:

(i) In Federal possession or control; or

(ii) In the possession or control of an institution or State or local government receiving Federal funds; or

(iii) Excavated or discovered on Federal or Tribal lands.

(2) These regulations apply to human remains and cultural items which are indigenous to Alaska, Hawaii, and the continental United States but not to territories of the United States.

§ 10.2 Definitions.

In addition to the term *Act*, which shall mean the Native American Graves Protection and Repatriation Act as described above, definitions used in these regulations are grouped in five classes: Participants; human remains and cultural items; cultural affiliation; location; and procedures.

(a) *Participants* are persons who implement or are referenced in these regulations. As used in these regulations, the term:

(1) *Secretary* means the Secretary of the Interior.

(2) *Review Committee* means the advisory committee established pursuant to section 8 of the Act.

(3) *Departmental Consulting Archeologist* means the official of the Department of the Interior designated by the Secretary as responsible for the administration of matters relating to these regulations. Communications to the Departmental Consulting Archeologist should be addressed to: Departmental Consulting Archeologist,

Archeological Assistance Division,
National Park Service,
P.O. Box 37127,
Washington, DC 20013-7127.

(4) *Federal agency* means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution as stipulated in section 2 (a)(4) of the Act.

(5) *Federal agency official* means the individual within a Federal agency designated as being responsible for matters relating to these regulations.

(6) *Museum* means any institution or State or local government agency (including any institution of higher learning) that has possession of, or control over, human remains or cultural items and receives Federal funds. The phrase "receives Federal funds" means the receipt of funds by a museum after November 16, 1990, from a Federal agency through any grant, loan, contract

(other than a procurement contract), or other arrangement by which a Federal agency makes or made available to a museum assistance in the form of funds. Federal funds provided for any purpose that are received by a larger entity of which the museum is a part are considered Federal funds for the purposes of these regulations. For example, if a museum is a part of a State or local government or a private university and the State or local government or private university receives Federal funds for any purpose, the museum is considered to receive Federal funds.

(7) *Museum official* means the individual within a museum designated as being responsible for matters relating to these regulations.

(8) *Native American* means of, or relating to, a Tribe, people, or culture indigenous to the United States.

(9) *Indian Tribe* means any Tribe, band, nation, or other organized Indian group or community of Indians, including any Alaska Native village or corporation as defined in or established by the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Groups that wish to determine if they qualify as an Indian Tribe under this definition should consult the Federal Register for the current list of recognized Indian Tribes as published by the Bureau of Indian Affairs, U.S. Department of the Interior. Groups which are not included in this list but wish to be considered as an Indian Tribe for the purposes of these regulations should contact the Bureau of Indian Affairs to ascertain whether they are qualified. Generally, in order to be acknowledged as an Indian Tribe under these regulations, an Indian entity must be ethnically and culturally identifiable and have had a substantially autonomous and continuous tribal existence throughout history until the present. Groups, associations, organizations, or corporations of any character formed in recent times generally do not qualify, nor do splinter groups, political factions, communities, or entities of any character which separate from the main body of an Indian Tribe unless it can clearly identify that the group has functioned throughout history as an autonomous entity. Except as otherwise indicated, the term Indian Tribe when used in these regulations shall also mean Native Hawaiian organizations as defined below.

(10) *Native Hawaiian* means any individual who is a descendant of the

aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(11) *Native Hawaiian organization* means any organization that:

- (i) Serves and represents the interests of Native Hawaiians;
- (ii) Has as a primary and stated purpose the provision of services to Native Hawaiians; and
- (iii) Has expertise in Native Hawaiian affairs.

Such organizations shall include the Office of Hawaiian Affairs and *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*.

(12) *Indian tribe official* means the individual officially designated by the governing body of an Indian tribe as responsible for matters relating to these regulations.

(13) *Traditional religious leader* who is recognized by members of that Indian tribe as:

- (i) Being responsible for performing cultural duties relating to the ceremonial or religious traditions of that group, or
- (ii) Exercising a leadership role in an Indian tribe based on the group's cultural, ceremonial, or religious practices.

(14) *Lineal descendant* means an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under these regulations.

(15) *Person* means an individual, partnership, corporation, trust, institution, association, or any other private entity, or, any official, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(b) *Human remains and cultural items* are specific Native American human remains or objects. For the purposes of these regulations, the term:

(1) *Human remains* means the physical remains of a human body, including but not limited to bones, teeth, hair, ashes, or mummified or otherwise preserved soft tissues of a person of Native American ancestry. The term does not include remains or portions of remains freely given by the individual from whose body there were obtained, such as hair made into ropes or nets. For the purposes of determining cultural affiliation, human remains incorporated into a cultural item, as defined below, shall be considered as part of that cultural item.

(2) *Cultural items* means, collectively, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony.

(3) *Associated funerary objects* means:

- (i) Items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains that also are currently in the possession or control of a museum or Federal agency, or

- (ii) Other items reasonably believed to have been made exclusively for burial purposes or to contain human remains.

(4) *Unassociated funerary objects* means items that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been intentionally placed with or near individual human remains, either at the time of death or later, but for which the associated human remains are not in the possession or control of a museum or Federal agency. These cultural items must be identified by a preponderance of the evidence as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian Tribe or as being related to specific individuals or families or to known human remains.

(5) *Sacred objects* means items that are specific ceremonial objects needed by traditional Native American religious leaders for the current practice of traditional Native American religions by their present-day adherents. While many items, from ancient pottery shards to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations are specifically limited to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony.

(6) *Objects of cultural patrimony* means cultural items having ongoing historical, traditional, or cultural importance central to the Indian Tribe itself, rather than property owned by an individual Tribal member. These objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual Tribal member. Such objects must have been considered inalienable by the culturally affiliated Indian Tribe at the time the object was separated from the group. Objects of cultural patrimony include items such as Zuni War Gods, the Confederacy Wampum Belts of the Iroquois, and other objects of similar character and significance to the Indian Tribe as a whole.

(c) *Cultural affiliation* means that there is a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(d) *Location* describes the property on which human remains or cultural items are discovered or excavated. As used in these regulations the term:

(1) *Federal lands* means any land other than Tribal lands that are controlled or owned by the United States Government, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). United States "control" refers to those lands in which the United States has a legal interest sufficient to permit it to apply these regulations without abrogating the otherwise existing legal rights of a person.

(2) *Tribal lands* means all lands, excluding privately owned lands, which:

- (i) Are within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States;

- (ii) Comprise dependent Indian communities as recognized pursuant to 18 U.S.C. 1151;

- (iii) Are administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act of 1920 and Section 4 of the Hawaiian Statehood Admission Act (Pub.L. 86-3; 73 Stat. 6).

(3) *Aboriginal lands* means Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Claims Court as land aboriginally occupied by an Indian Tribe.

(e) *Procedures* are the processes that are required to implement these regulations. As used in these regulations, the term:

(1) *Summary* means the written description of collections that may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony required by § 10.8 of these regulations.

(2) *Inventory* means the item-by-item description of human remains and associated funerary objects.

(3) *Intentional excavation* means the planned archeological removal of human remains or cultural items found under or on the surface of Federal or Tribal lands.

(4) *Inadvertent discovery* means the unanticipated encounter or detection of human remains or cultural items found

under or on the surface of Federal or Tribal lands pursuant to Section 3 (d) of the Act.

(5) *Possession* by a museum or Federal agency of human remains or cultural items means having physical custody of such objects with a sufficient legal interest to lawfully treat the objects as part of its collection for purposes of these regulations.

(6) *Control* means having a legal interest in human remains or cultural items sufficient to lawfully permit the museum or Federal agency to treat the objects as part of its collection for purposes of these regulations whether or not the remains and cultural items are in the physical custody of the museum or Federal agency.

Subpart B—Human Remains and Cultural Items From Federal or Tribal Lands

§ 10.3 Intentional excavations.

(a) *General.* This section implements Section 3 (c) of the Act regarding the ownership or control of human remains and cultural items that are intentionally excavated from Federal or Tribal lands after November 16, 1990.

(b) *Specific requirements.* These regulations permit the intentional excavation of human remains or cultural items from Federal or Tribal lands only if:

(1) The objects are excavated pursuant to applicable legal requirements, including, if otherwise required, a permit issued pursuant to the Archaeological Resources Protection Act (16 U.S.C. 470aa et seq.);

(2) The objects are excavated after consultation with or, in the case of Tribal lands, consent of, the appropriate Indian Tribe;

(3) The disposition of the objects is consistent with their ownership as described below; and

(4) Proof of the consultation or consent is shown.

(c) *Procedures.* (1) Any person who proposes to undertake an activity on Federal or Indian lands that may result in the excavation of human remains or cultural items shall immediately notify in writing the responsible Federal agency official or Indian tribe official. The requirements of these regulations regarding the planned activity shall apply whether or not this required notice is or was duly provided.

(2) The Federal agency official shall take reasonable steps to determine whether a planned activity, of which he or she has received notice or otherwise is aware, may result in the excavation of human remains or cultural items from Federal lands. Prior to issuing any

approvals or permits for activities otherwise required by law, the Federal agency official shall notify in writing the Indian Tribe or Tribes that are likely to be culturally affiliated with any human remains or cultural items that may be excavated. The Federal official shall also notify any present-day Indian Tribe which aboriginally occupied the area of the activity and any other Indian Tribes that the Federal official reasonably believes may have a relationship to the human remains and cultural items that are expected to be found. The notice shall be in writing and shall describe the planned activity, its general location, the basis upon which it was determined that human remains or cultural items may be excavated, and, the basis for determining likely cultural affiliation pursuant to § 10.14. The notice shall also propose a time and place for meetings or consultations to further consider the activity, the Federal agency's proposed treatment of any human remains or cultural items that may be excavated, and the proposed disposition of any excavated human remains or cultural items. Consultation shall be conducted pursuant to § 10.5.

(3) If the planned activity is also subject to review under section 106 of the National Historic Preservation Act (16 U.S.C. 470 et seq.), the Federal agency official should coordinate consultation and any subsequent agreement for compliance conducted under that Act with the requirements of § 10.3 (c)(2) and § 10.5. Compliance with these regulations does not relieve Federal officials of requirements to comply with section 106 of the National Historic Preservation Act (16 U.S.C. 470 et seq.).

(4) If an Indian Tribe receives notice of a planned activity or otherwise becomes aware of a planned activity that may result in the excavation of human remains or cultural items on Indian lands, the Indian Tribe should take appropriate steps to make certain that any human remains or cultural items excavated or discovered as a result of the planned activity are disposed of in accordance with their ownership as described in § 10.6.

§ 10.4 Inadvertent discoveries.

(a) *General.* This section implements section 3 (d) of the Act regarding the ownership or control of human remains and cultural items that are discovered inadvertently on Federal or Tribal lands after November 16, 1990.

(b) *Discovery.* Any person who knows of the discovery of human remains or cultural items on Federal or Tribal lands after November 16, 1990, must provide

notification of the discovery, in writing, to the responsible Federal agency official with respect to Federal lands, and, with respect to Tribal lands, to the responsible Indian Tribe official. The requirements of these regulations regarding discoveries shall apply whether or not a discovery is duly reported.

(c) *Ceasing activity.* If the discovery occurred in connection with an ongoing activity on Federal or Tribal lands, the person, in addition to providing the notice described above, shall stop the activity in the area of the discovery and make a reasonable effort to protect the human remains or cultural items discovered.

(d) *Federal lands.* Upon receipt of such a notification with respect to Federal lands, the responsible Federal agency official shall:

(1) Immediately certify receipt of the notification;

(2) Take immediate steps, if necessary, to secure and protect discovered human remains and cultural items, including, as appropriate, stabilization or covering;

(3) Notify within one (1) working day the known Indian Tribe or Tribes likely to be culturally affiliated with the discovered human remains or cultural items, and, if known, the present-day Indian Tribe which aboriginally occupied the area and any other Indian Tribe that is reasonably known to have a relationship to the human remains or cultural items. The notice shall include pertinent information as to kind of material, condition, and the circumstances of the discovery;

(4) Initiate consultation on the discovery pursuant to § 10.5.

(e) *Resumption of activity.* The activity that resulted in the inadvertent discovery may resume thirty (30) days after certification by the notified Federal agency or Indian Tribe of receipt of the notice of discovery if the resumption of the activity is otherwise lawful. The activity may also be resumed, if otherwise lawful, at any time that a written, binding agreement is executed between the necessary parties that adopts a recovery plan for the removal, treatment, and disposition of the human remains or cultural items in accordance with their ownership.

(f) *Indian tribes.* Indian Tribes that are notified or otherwise become aware of a discovery of human remains or cultural items on their Tribal lands should take appropriate steps to assure that the human remains or cultural items are protected and disposed of in accordance with their ownership as described below.

(g) *Federal agency officials.* Federal agency officials should coordinate their responsibilities under this section with their emergency discovery responsibilities under Section 106 of the National Historical Preservation Act (16 U.S.C. 470 (f) *et seq.*), 36 CFR 800.11 or section 3 (a) of the Archeological and Historic Preservation Act (16 U.S.C. 469 (a-c)). Compliance with these regulations does not relieve Federal officials of the requirement to comply with section 106 of the National Historical Preservation Act (16 U.S.C. 470 (f) *et seq.*), 36 CFR 800.11 or section 3 (a) of the Archeological and Historic Preservation Act (16 U.S.C. 469 (a-c)).

§ 10.5 Consultation.

Consultation as part of the discovery or excavation of human remains or cultural items on Federal lands shall be conducted in accordance with the following requirements.

(a) *Consulting parties.* Federal agency officials shall consult with Indian Tribe officials and traditional religious leaders and known lineal descendants:

- (1) That are, or are likely to be, culturally affiliated with human remains and cultural items; and
- (2) On whose aboriginal lands the planned activity will occur or where the discovery has been made.

(b) *Initiation of consultation.* Upon receiving notice of, or otherwise becoming aware of, an inadvertent discovery or planned activity that has resulted or may result in the excavation or discovery of human remains and cultural items on Federal lands, the responsible Federal agency official shall, as part of the procedures described in § 10.3 and § 10.4, take appropriate steps to establish the likely cultural affiliation of the objects pursuant to § 10.14. The Federal official shall notify in writing the Indian Tribe or Tribes that are likely to be culturally affiliated with them, and, if known, the lineal descendants of the deceased individual, as well as any present-day Indian Tribe which aboriginally occupied the area and other Indian Tribes that may have a relationship to the human remains and cultural items. The consultation shall seek to identify traditional religious leaders who should also be consulted and seek to identify, where applicable, lineal descendants and Indian Tribes related to the human remains and cultural items.

(c) *Provision of information.* During the consultation process, as appropriate, the Federal agency official shall provide the following information in writing to officials of Indian Tribes that are or are likely to be culturally affiliated with human remains and cultural items

excavated or discovered on Federal lands:

(1) A list of all Indian Tribes that are being, or have been, consulted regarding the particular human remains and cultural items;

(2) An indication that additional documentation used to identify cultural affiliation will be supplied upon request.

(d) *Requests for information.* During the consultation process, Federal agency officials shall request, as appropriate, the following information from Indian Tribes that are, or are likely to be, culturally affiliated with excavated or discovered human remains and cultural items:

(1) Name and address of the Indian Tribe official to act as representative in consultations related to particular human remains and cultural items;

(2) Names and appropriate methods to contact lineal descendants who should be contacted to participate in the consultation process;

(3) Names and appropriate methods to contact any traditional religious leaders who should be consulted regarding the collections;

(4) Recommendations on how the consultation process should be conducted; and

(5) Kinds of cultural items that the Indian Tribe considers likely to be unassociated funerary objects, sacred objects, or objects of cultural patrimony.

(e) *Written plan of action.* The consultation should result in a written plan, approved and signed by the Federal agency official. Indian Tribe official(s) and other parties may sign as appropriate. At a minimum, the plan of action should document the following:

(1) The kinds of objects to be considered as cultural items as defined in § 10.2 (b);

(2) The specific information used to determine cultural affiliation pursuant to § 10.14;

(3) The treatment, care, and handling of human remains and cultural items recovered;

(4) The archeological recording of the human remains and cultural items recovered;

(5) The kinds of analysis for each kind of object;

(6) Any steps to be followed to contact Indian Tribe officials at the time of excavation of specific human remains or cultural items;

(7) The kind of traditional treatment, if any, to be afforded the human remains or cultural items;

(8) The nature of reports to be prepared; and

(9) The disposition of human remains and cultural items in accordance with their ownership.

(f) *Programmatic agreements.*

Whenever possible, Federal agencies should enter into programmatic agreements with Indian Tribes that are culturally affiliated with specific human remains or cultural items and have claimed, or are likely to claim, those human remains or cultural items excavated or discovered on Federal lands. These agreements should address all Federal agency land management activities that could result in the excavation or discovery of human remains or cultural items. Consultation should lead to the establishment of a process for effectively implementing the requirements of these regulations regarding standard consultation procedures, the establishment of cultural affiliation consistent with procedures in this section, and the treatment and disposition of human remains or cultural items. The agreements, or the correspondence related to the effort to reach agreements, shall constitute proof of consultation as required by these regulations.

(g) *Traditional religious leaders.* The Federal agency official shall be cognizant that Indian Tribe officials may need to confer with traditional religious leaders prior to making recommendations.

§ 10.6 Ownership.

(a) *Priority of ownership.* This section implements section 3 (a) of the Act, subject to the limitations of § 10.15, regarding the ownership or control of human remains and cultural items excavated or discovered on Federal or Tribal lands after November 16, 1990. Ownership or control of these human remains and cultural items is, with priority given in the order listed:

(1) In the case of human remains and associated funerary objects, in the lineal descendant of the deceased individual as determined pursuant to § 10.14 (b);

(2) In cases where a lineal descendant cannot be ascertained or no claim is made, and with respect to unassociated funerary objects, sacred objects, and objects of cultural patrimony:

(i) In the Indian Tribe on whose Tribal land the human remains or cultural items were discovered;

(ii) In the Indian Tribe that has the closest cultural affiliation with the human remains or cultural items as determined pursuant to § 10.14 (c); or

(iii) In circumstances in which the cultural affiliation of the human remains and cultural items cannot be ascertained and the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the

United States Court of Claims as the aboriginal land of an Indian Tribe:

(A) In the Indian Tribe aboriginally occupying the Federal land on which the objects were discovered, or

(B) If it can be shown by a preponderance of the evidence that a different Indian Tribe has a stronger cultural relationship with the human remains and cultural items, in the Indian Tribe that has the strongest demonstrated relationship.

(b) *Applicability of these regulations to the ownership of human remains and cultural items.* The ownership of human remains or cultural items and other provisions of the Act apply to all planned excavations and inadvertent discoveries made after November 16, 1990, including those made before the effective date of these regulations.

(c) *Final notice, claims and disposition with respect to Federal lands.* Upon determination of the lineal descendant or Indian Tribe that appears to own particular human remains or cultural items excavated or discovered on Federal lands, the responsible Federal agency official shall, subject to the notice required herein and the limitations of § 10.15, transfer ownership or control of the objects to the Indian Tribe or lineal descendants in accordance with appropriate procedures, which shall respect traditional customs and practices. Prior to any such disposition by a Federal agency official, the Federal agency official shall publish a general notice of the proposed disposition in a newspaper of general circulation in the area in which the human remains or cultural items were excavated or discovered. The notice shall provide information as to the nature and cultural affiliation; of the human remains and cultural items and shall solicit further claims to ownership. The notice shall be published at least two (2) times at least a week apart, and the transfer shall not take place until at least thirty (30) days after the publication of the second notice to allow time for any additional claimants to come forward. If additional claimants do come forward and the Federal agency official cannot clearly determine which claimant is the proper recipient, the Federal agency shall not transfer ownership or control of the objects until such time as the proper recipient is determined pursuant to these regulations. The Federal agency official shall send a copy of the notice and information on when and in what newspaper to the Departmental Consulting Archeologist.

§ 10.7 Disposition of unclaimed human remains and cultural items. [Reserved]

Subpart C—Human Remains or Cultural Items in Museums and Federal Collections

§ 10.8 Summaries.

(a) *General.* This section implements section 6 of the Act. Under section 6, each museum or Federal agency that has possession or control over collections which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony is to provide a summary of these collections based upon available information held by the museum or Federal agency. The purpose of the summary is to provide information about the collections to lineal descendants and culturally affiliated Indian Tribes that may wish to request repatriation of such objects. The summary serves in lieu of an object-by-object inventory of these collections, although, if an inventory is available, it may be substituted. Federal agencies are responsible for ensuring that these requirements are met for all collections from their lands or generated by their undertakings whether the collections are held by the Federal agency or by a non-Federal institution.

(b) *Contents of summaries.* For each collection or portion of a collection, the summary shall include: an estimate of the number of objects in the collection or portion of the collection; a description of the kinds of objects included; reference to the means, date(s), and location(s) in which the collection was acquired, where readily ascertainable; and information relevant to identifying lineal descendants, if available, and cultural affiliation.

(c) *Completion.* Summaries shall be completed not later than November 16, 1993.

(d) *Consultation.* (1) Consulting parties. Museum and Federal agency officials shall consult with:

(i) Lineal descendants, when known or claimed on the basis of the traditional kinship system, of individuals whose unassociated funerary objects or sacred objects are likely to be subject to the summary provisions of these regulations; and

(ii) Officials and traditional religious leaders identified by Indian Tribes:

(A) From whose Tribal lands unassociated funerary objects, sacred objects, or objects of cultural patrimony originated; and

(B) From whose aboriginal lands unassociated funerary objects, sacred objects, or objects of cultural patrimony originated; and

(C) That are, or are likely to be, culturally affiliated with unassociated.

funerary objects, sacred objects, or objects of cultural patrimony.

(2) Initiation of consultation. Museum and Federal agency officials shall begin summary consultation no later than the completion of the summary process.

(3) Provision of information. During summary consultation, museums and Federal agency officials shall provide copies of the summary to lineal descendants, when known, and to officials and traditional religious leaders. Upon request, museum and Federal agency officials shall provide Indian Tribes with access to records, catalogues, relevant studies, or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of objects covered by the summary. This information may be requested at any time and shall be provided in a reasonable manner to be agreed upon by all parties. The Review Committee also shall be provided access to such materials.

(4) Requests for information. During the summary consultation, museum and Federal agency officials shall request, as appropriate, the following information from Indian Tribes that are, or are likely to be, culturally affiliated with their collections:

(i) Name and address of the Indian Tribe official to act as representative in consultations related to particular objects;

(ii) Names and appropriate methods to contact any lineal descendants, if known, of individuals whose unassociated funerary objects or sacred objects are included in the summary;

(iii) Names and appropriate methods to contact traditional religious leaders who should be consulted regarding the collections;

(iv) Recommendations on how the consultation process should be conducted; and

(v) Kinds of cultural items that the Indian Tribe considers to be sacred objects or objects of cultural patrimony.

(e) *Notification.* Repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony to lineal descendants or culturally affiliated Indian Tribes as determined pursuant to § 10.10 (a), shall not proceed prior to submission of an object-by-object list of the objects being requested and a notice of intent to repatriate to the Departmental Consulting Archeologist. The object-by-object description shall include, if available:

(1) Accession and catalogue entries for each object;

(2) Information related to the acquisition of each object, including the name of the person or organization from whom the object was obtained, if known;

(3) The date each object was acquired;

(4) The place each object was acquired, i.e., name or number of site, county, state, and Federal agency administrative unit, if applicable;

(5) The means of acquisition, i.e., gift, purchase, excavation, etc.;

(6) The antiquity of each object, if known;

(7) A description of each object, including dimensions, materials, and photographic documentation, if appropriate;

(8) A summary of the evidence used to determine the cultural affiliation of each object pursuant to § 10.14.

The notice of intent to repatriate shall summarize the object-by-object description in sufficient detail so as to enable other individuals or Indian Tribes to determine their interest in the claimed objects. It shall include information that identifies each particular set of claimed unassociated funerary objects, sacred objects, or objects of cultural patrimony and the circumstances surrounding its acquisition and describes the objects that are clearly identifiable as to Tribal origin. It shall also describe the objects that are not clearly identifiable as being culturally affiliated with a particular Indian Tribe, but which, given the totality of circumstances surrounding acquisition of the objects, are likely to be culturally affiliated with a particular Indian Tribe. The Departmental Consulting Archeologist shall publish the notice of intent to repatriate in the *Federal Register*.

§ 10.9 Inventories.

(a) *General.* This section implements section 5 of the Act. Under section 5, each museum or Federal agency that has possession or control over holdings or collections of human remains and associated funerary objects is to compile an inventory of such objects, and, to the fullest extent possible based on information possessed by the museum or Federal agency, identify the geographical and cultural affiliation of each item. The purpose of the inventory is to facilitate repatriation by providing clear descriptions of human remains and associated funerary objects and establishing the cultural affiliation between these objects and present-day Indian Tribes. Museums and Federal agencies are encouraged to undertake inventories on those portions of their collections for which information is

readily available or about which Indian Tribes have expressed special interest. Early focus on these parts of collections will result in repatriations that may serve as models for other inventories. Federal agencies are responsible for ensuring that these requirements are met for all collections from their lands or generated by their undertakings whether the collections are held by the Federal agency or by a non-Federal institution.

(b) *Consultation.* (1) Consulting parties. Museum and Federal agency officials shall consult with:

(i) Lineal descendants, when known or claimed on the basis of the traditional kinship system, of individuals whose remains and associated funerary objects are likely to be subject to the inventory provisions of these regulations; and

(ii) Officials and traditional religious leaders identified by Indian Tribes:

(A) From whose Tribal lands human remains and associated funerary objects originated;

(B) From whose aboriginal lands human remains and associated funerary objects originated; and

(C) That are, or are likely to be, culturally affiliated with human remains and associated funerary objects.

(2) Initiation of consultation. Museum and Federal agency officials shall begin inventory consultation no later than the point in the inventory process at which the cultural affiliation of human remains and associated funerary objects is being investigated actively.

(3) Provision of information. During inventory consultation, museums and Federal agency officials shall provide the following information in writing to lineal descendants, when known, and to Indian Tribe officials and traditional religious leaders.

(i) A list of all Indian Tribes that are, or have been, consulted regarding the particular human remains and associated funerary objects;

(ii) A general description of the conduct of the inventory;

(iii) The projected time frame for conducting the inventory; and

(iv) An indication that additional documentation used to identify cultural affiliation will be supplied upon request.

(4) Requests for information. During the inventory consultation, museum and Federal agency officials shall request, as appropriate, the following information from Indian Tribes that are, or are likely to be, culturally affiliated with their collections:

(i) Name and address of the Indian Tribe official to act as representative in consultations related to particular

human remains and associated funerary objects;

(ii) Names and appropriate methods to contact any lineal descendants of individuals whose remains and funerary objects are or are likely to be included in the inventory;

(iii) Names and appropriate methods to contact traditional religious leaders who should be consulted regarding the collections;

(iv) Recommendations on how the consultation process should be conducted; and

(v) Kinds of cultural objects that the Indian Tribe reasonably believes to have been made exclusively for burial purposes or to contain human remains of their ancestors.

(c) *Required information.* The following documentation shall be included, if available, for all inventories:

(1) Accession and catalogue entries, including the accession/catalogue entries of human remains with which funerary objects were associated;

(2) Information related to the acquisition of each object, including the name of the person or organization from whom the object was obtained, if known;

(3) The date each object was acquired;

(4) The place each object was acquired, i.e., name or number of site, county, state, and Federal agency administrative unit, if applicable;

(5) The means of acquisition, i.e., gift, purchase, excavation, etc.;

(6) The antiquity of the human remains and associated funerary objects, if known;

(7) A description of each set of human remains or associated funerary objects, including dimensions, materials, and photographic documentation, if appropriate;

(8) A summary of the evidence used to determine the cultural affiliation of the human remains or associated funerary objects pursuant to § 10.14 of these regulations.

(d) *Documents.* Two separate documents shall comprise the inventory:

(1) A listing of all human remains and associated funerary objects that are identified as being culturally affiliated with one or more present-day Indian Tribes. The list must indicate for each item or set of items whether cultural affiliation is clearly determined or likely; and

(2) A listing of all human remains and associated funerary objects for which no culturally affiliated present-day Indian Tribe can be determined.

(e) *Notification.* (1) If the inventory results in the identification or likely

identification of the cultural affiliation of any particular human remains or associated funerary objects, the museum or Federal agency, not later than six (6) months after completion of the inventory, shall send culturally affiliated Indian Tribes the inventory of culturally affiliated human remains and a notice of inventory completion that summarizes the results of the inventory.

(2) The notice of inventory completion shall summarize the contents of the inventory in sufficient detail so as to enable the recipients to determine their interest in the inventoried items. It shall include information that identifies each particular set of human remains or associated funerary objects and the circumstances surrounding its acquisition, describes the human remains or associated funerary objects that are clearly identifiable as to cultural affiliation, and describes the human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with an Indian Tribe, but which, given the totality of circumstances surrounding acquisition of the human remains or associated objects, are identified as likely to be culturally affiliated with a particular Indian Tribe.

(3) If the inventory results in a determination that the human remains are of an identifiable individual, the Museum or Federal agency official shall convey this information to the Indian Tribe of which the deceased was a member, and, if known, shall so notify any lineal descendant of the deceased individual.

(4) The notification of inventory completion and a copy of the inventory shall also be sent to the Departmental Consulting Archeologist. These submissions shall be sent in both printed hard copy and electronic formats. Information on the proper format for electronic submission and suggested alternatives for museums unable to meet these requirements are available from the Departmental Consulting Archeologist.

(5) Upon request by an Indian Tribe that has received or should have received notice of inventory results as described above, a museum or Federal agency shall supply additional available documentation to supplement the information provided with the notice. For these purposes, the term "documentation" means a summary of existing museum or Federal agency records including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts

surrounding the acquisition and accession of human remains and associated funerary objects.

(6) In the event that the inventory results in a determination that the museum or Federal agency has possession of or control over human remains or associated funerary objects that cannot be identified as affiliated with a particular Indian Tribe, the museum or Federal agency shall provide the Department Consulting Archeologist notice of this result and a copy of the list of culturally unidentifiable human remains and associated funerary objects. The Departmental Consulting Archeologist shall make this information available to members of the Review Committee.

(7) The Departmental Consulting Archeologist shall publish notices of inventory completion received from Museums and Federal agencies in the Federal Register.

(f) *Completion.* Inventories shall be completed not later than November 16, 1995. Any museum that has made a good faith effort to complete its inventory, but which will be unable to complete the process by this deadline, may request an extension of the time requirements from the Secretary. An indication of good faith efforts shall include, but not necessarily be limited to, the initiation of active consultation and documentation regarding the collection and the development of a written plan to carry out the inventory process. Minimum components of an inventory plan are: A definition of the steps required; the position titles of the persons responsible for each step; the planned schedule of implementation of the plan; and a description of the efforts proposed to obtain the funding required to implement the plan.

§ 10.10 Repatriation.

(a) *Unassociated funerary objects, sacred objects, and objects of cultural patrimony.* (1) Criteria. If the following criteria are met for unassociated funerary objects, sacred objects, or objects of cultural patrimony, a museum or Federal agency will expeditiously repatriate the objects upon request pursuant to section 7 of the Act:

(i) The object meets the definitions established § 10.2 (b) (4), (5) or (6);

(ii) The cultural affiliation of the object is established pursuant to § 10.14 through the summary, consultation, and notification procedures.

(iii) The known lineal descendant or Indian Tribe presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum does not have a right

of possession to the objects as defined below.

(iv) The agency or museum is unable to present evidence to the contrary proving that it does have a right of possession as defined below.

(v) None of the specific exceptions listed in § 10.10 (c) apply.

(2) Right of possession. For purposes of these regulations, "right of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object, or object of cultural patrimony from an Indian Tribe with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession to that object.

(3) Notification. A requested repatriation shall take place within ninety (90) days of receipt, provided that it may not occur until at least thirty (30) days after publication of the notice of intent to repatriate in the Federal Register as described in § 10.8.

(b) *Human remains and associated funerary objects.* (1) Criteria. If the following criteria are met for human remains and associated funerary objects, the museum or Federal agency will expeditiously repatriate the remains and objects.

(i) The remains or associated funerary object meets the definitions established in § 10.2 (b)(1) or (b)(3).

(ii) The cultural affiliation of the deceased individual to known lineal descendant or present day Indian Tribe has been reasonably traced by the standards set forth in § 10.14 through the inventory and consultation process.

(iii) None of the specific exceptions listed in § 10.10 (c) apply.

(2) Notification. A requested repatriation shall take place within ninety (90) days of receipt, provided that it may not occur until at least thirty (30) days after publication of the notice of inventory completion in the Federal Register as described in § 10.9.

(c) *Exceptions.* These requirements for repatriation shall not apply to:

(1) Circumstances where human remains or cultural items are indispensable to the completion of a specific scientific study commenced prior to receipt of a request for repatriation, the outcome of which is of major benefit to the United States. Human remains and cultural items in such circumstances shall be returned no later than ninety (90) days after completion of the study; or

(2) Circumstances where there are multiple requests for repatriation of human remains or cultural items and

the museum or Federal agency, after complying with these regulations, cannot clearly determine which requesting party is the proper recipient. In such circumstances, the museum or Federal agency shall retain the human remains and cultural items until such time as the requesting parties agree upon their recipients or the dispute is otherwise resolved pursuant to these regulations or as ordered by a court of competent jurisdiction; or

(3) Circumstances where the repatriation of human remains and cultural items in the possession or control of a museum would result in a taking of property within the meaning of the Fifth Amendment of the United States Constitution in which event the ownership or custody of the objects shall be as provided under otherwise applicable law. Nothing in these regulations shall prevent a museum or Federal agency, where otherwise so authorized, or a lineal descendant or Indian Tribe, from expressly relinquishing title to, right of possession of, or control over any human remains or cultural items.

(4) Circumstances where the repatriation is not consistent with other repatriation limitations identified in § 10.15 of these regulations.

(d) *Place and manner of repatriation.* The repatriation of human remains and cultural items shall be accomplished by the museum or Federal agency in consultation with the requesting lineal descendants or culturally affiliated Indian Tribe, as appropriate, to determine the place and manner of the repatriation.

(e) *Record of repatriation.* Museums and Federal agencies shall adopt internal procedures adequate to permanently document the content and recipients of all repatriations.

(f) *Unaffiliated human remains.* If the cultural affiliation of human remains cannot be established pursuant to these regulations, the remains shall be considered unaffiliated. Museum and Federal agency officials shall report the inventory information regarding such remains in their holdings to the Departmental Consulting Archeologist who will transmit this information to the Review Committee. The Review Committee is responsible for compiling an inventory of unaffiliated human remains in the possession or control of each museum and Federal agency, and, for recommending to the Secretary specific actions for disposition of such human remains.

§ 10.11 Disposition of Culturally Unidentifiable Human Remains. [Reserved]

§ 10.12 Civil Penalties. [Reserved]

§ 10.13 Future Applicability. [Reserved]

Subpart D—General

§ 10.14 Lineal Descent and Cultural Affiliation.

(a) *General.* This section identifies procedures for determining lineal descent and cultural affiliation between present-day individuals and Indian Tribes and human remains and cultural items in museum or Federal agency collections or discovered or excavated from Federal lands. They may also be used by Indian Tribes with respect to Tribal lands.

(b) *Criteria for determining lineal descent.* A lineal descendant is an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian Tribe to a known Native American individual whose remains, funerary objects, or sacred objects are being requested under these regulations. This standard requires that the earlier person be identified as an individual whose descendants can be traced.

(c) *Criteria for determining cultural affiliation.* "Cultural affiliation" means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian Tribe and an identifiable earlier group. All of the following requirements must be met in order to determine cultural affiliation between a present-day Indian Tribe and the human remains and cultural items of an earlier group:

(1) Existence of an identifiable present-day Indian Tribe.

(2) Evidence of the existence of an identifiable earlier group. Evidence to support this requirement must:

(i) Establish the identity and cultural characteristics of the earlier group,

(ii) Document distinct patterns of material culture manufacture and distribution methods for the earlier group, or

(iii) Establish the existence of the earlier group as a biologically distinct population.

(3) Evidence of the existence of a shared group identity that can be reasonably traced between the present-day Indian Tribe and the earlier group. Evidence to support this requirement must establish that a present-day Indian Tribe has been identified from prehistoric or historic times to the present as descending from the earlier group.

(d) *Evidence.* Evidence of a kin or cultural affiliation between a present-day individual or Indian Tribe and human remains and cultural items shall be established by using the following types of evidence: Geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion.

(e) *Standard of proof.* Lineal descent of a present-day individual from an earlier individual and cultural affiliation of a present-day Indian Tribe to human remains and cultural items shall be established by a preponderance of the evidence. Claimants do not have to establish cultural affiliation with scientific certainty.

§ 10.15 Repatriation Limitations and Remedies.

(a) *Failure to claim prior to repatriation.* Any person who fails to make a timely claim for disposition or repatriation of human remains and cultural items subject to subpart C of these regulations, or, with respect to Federal lands, subpart B of these regulations, prior to the repatriation or transfer of the items shall be deemed to have irrevocably waived any right to claim such human remains or cultural items pursuant to these regulations or the Act. For these purposes, a "timely claim" shall mean the filing of a written claim with a responsible Federal agency or museum official prior to the time the particular human remains or cultural items at issue are duly repatriated or disposed of to a claimant by a museum or Federal agency pursuant to these regulations. If there is more than one (1) claimant, the human remains and/or cultural items shall be held by the responsible museum or Federal agency or person having custody thereof pending resolution of the claim. Any person who has custody of such human remains or cultural items and does not claim entitlement to them shall place the objects in the custody of the responsible museum or Federal agency for retention until the question of ownership is resolved.

(b) *Failure to claim where no repatriation or disposition has occurred. [Reserved]*

(c) *Exhaustion of remedies.* No person shall be considered to have exhausted his or her administrative remedies with respect to the repatriation or disposition of human remains or cultural items subject to subpart B of these regulations, or, with respect to Federal lands, subpart C of these regulations, until such time as the person has filed a written claim for repatriation or disposition of the objects with the

responsible museum or Federal agency and the claim has been denied.

§ 10.16 Review committee.

(a) *General.* The Review Committee shall advise Congress and the Secretary on matters relating to the Act and these regulations, including, but not limited to, monitoring the performance of museums and Federal agencies in carrying out their responsibilities, facilitating and making recommendations on the resolution of disputes as described further in § 10.17, and compiling a record of culturally unidentifiable human remains that are in the possession or control of museums and Federal agencies and recommending actions for their disposition.

(b) *Recommendations.* Any recommendation, finding, report, or other action of the Review Committee is advisory only and shall not be binding on any person. Any records and findings made by the Review Committee may be admissible as evidence in actions brought by persons alleging a violation of the Act.

§ 10.17 Dispute resolution.

(a) *Formal and informal resolutions.* Any person who wishes to contest actions taken by museums, Federal agencies, or Indian Tribes with respect to the repatriation and disposition of human remains and cultural items is encouraged to do so through informal negotiations in order to achieve a fair resolution of the matter. The Review Committee may assist in this regard as described below. In addition, the United States District Courts have jurisdiction over any action brought that alleges a violation of the Act.

(b) *Review Committee role.* The Review Committee may facilitate the informal resolution of disputes relating to these regulations among interested parties that are not resolved by good faith negotiations. Review Committee actions may include convening meetings between parties to disputes, making advisory findings as to contested facts, and making recommendations to the disputing parties or to the Secretary as to the proper resolution of disputes consistent with these regulations and the Act.

Appendix A to Part 10—Sample Summary

The following is a generic sample and should be used as a guideline for preparation of summaries tailoring the information to the specific circumstances of each case.

Before November 17, 1993
Chairman or Other Authorized Official
Indian Tribe

Street
State
Dear Sir/Madame Chair:

I write to inform you of collections held by our museum which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony that are, or are likely to be, culturally affiliated with your Indian Tribe. This notification is required by Section 6 of the Native American Graves Protection and Repatriation Act.

Our ethnographic collection includes approximately 200 items specifically identified as being manufactured or used by members of your Indian Tribe. These items represent various categories of material culture, including sea and land hunting, fishing, tools, household equipment, clothing, travel and transportation, personal adornment, smoking, toys, and figurines. The collection includes thirteen objects identified in our records as "medicine bags."

Approximately half of these items were collected were collected by John Doe during his expedition to your reservation in 1903 and accessioned by the museum that same year (see Major Museum Publication, no. 65 (1965)).

Another 50 of these items were collected by Jane Roe during her expeditions to your reservation between 1950–1960 and accessioned by the museum in 1970 (see Major Museum: no. 75 (1975)). Accession information indicates that several of these items were collected from members of the Able and Baker families.

For the remaining approximately 50 items, which were obtained from various collectors between 1930 and 1980, additional collection information is not readily available.

In addition to the above mentioned items, the museum has approximately 50 ethnographic items obtained from the estate of a private collector and identified as being collected from the "northwest portion of the State."

Our archeological collection includes approximately 1,500 items recovered from ten archeological sites on your reservation and another 5,000 items from fifteen sites within the area recognized by the Indian Claims Commission as being part of your Indian Tribe's aboriginal territory.

Please feel free to contact Fred Poe at (012) 345–6789 regarding the identification and potential repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony in this collection that are, or are likely to be, culturally affiliated with your Indian Tribe. You are invited to review our records, catalogues, relevant studies or other pertinent data for the purpose of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of these items. We look forward to working together with you.

Sincerely,
Museum Official
Major Museum

Appendix B to Part 10—Sample Inventory [Reserved]

Appendix C to Part 10—Sample Notice of Inventory Completion

The following is an example of a Notice of Inventory Completion published in the Federal Register.

National Park Service
Notice of Completion of Inventory of Native American Human Remains and Associated Funerary Objects within the Campbell Collection, Joshua Tree National Monument, Twentynine Palms, CA

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of the inventory of human remains and associated funerary objects within the Campbell Collection, a Federally curated collection at Joshua Tree National Monument, Twentynine Palms, California. Representatives of culturally affiliated Indian tribes are advised that the human remains and associated funerary objects in the Campbell Collection will be retained by the monument until July 20, 1992 after which they may be repatriated to the culturally affiliated groups.

The detailed inventory and assessment of the human remains and associated funerary objects within the Campbell Collection has been made by National Park Service professional curatorial staff, contracted specialists in physical anthropology and prehistoric archeology, and representatives of the following affected tribal organizations:

Agua Caliente Band of Cahuilla Indians
Twentynine Palms Band of Mission Indians

Torez Martinez Reservation
San Manuel Band of Mission Indians
Cabazon Reservation
Anza Band of Cahuilla Indians
Saboba Reservation
Morongo Reservation
Coyote Reservation
Santa Rosa Reservation
Colorado River Indian Tribes Reservation
Fort Mojave Indian Reservation
Chemehuevi Reservation
Quechan Indian Nation of the Fort Yuma Reservation

Between July 1931 and July 1933, Elizabeth and William Campbell carried out legally authorized archeological studies on Federal public lands now within Joshua Tree National Monument. Among the archeological resources collected were human cremations and artifacts believed to be associated with funerary events practiced by prehistoric and historic Native Americans. Recent assessment studies indicate that eleven individuals are represented; approximately 12,225 Native American artifacts are believed to have been associated with the funerary events. These artifacts include historic glass trade beads, native shell beads, chipped and other stone implements, pottery vessels, clay smoking pipes and human effigies, and animal bone tools. One cremation appears to be 19th Century in date; others may be estimated as

being between 9th to 14th Century in date. The collection does not contain materials which meet the definition of sacred object or objects of cultural patrimony.

Artifactual evidence does not allow specific identification as to tribal origin. However, recent assessment studies on portions of the Campbell Collection indicate basic similarities in crematory practice, ceramics, stone tool manufacture, ornamentation, and bone or shell artifacts of known archeological traditions believed ancestral to contemporary Cahuilla, Serrano, and Colorado River tribal peoples. Ten of the cremations are likely affiliated to Cahuilla or Serrano cultural traditions. One cremation is determined possibly to be of either Colorado

River area cultural affiliation, represented by contemporary Quechan, Mojave, Maricopa or Chemehuevi peoples, or of Diegueño cultural affiliation to the southwest of the monument.

Representatives of any Indian tribe believed to be culturally affiliated with the human remains and associated funerary objects of the Campbell collection that have not been contacted should talk with Superintendent David E. Moore, Joshua Tree National Monument, 74485 National Monument Drive, Twentynine Palms, CA, 92277, (619) 367-3676, before July 20, 1992.

Dated: June 9, 1992.

[Published: June 18, 1992]

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeological Assistance Division

Appendix D to Part 10—Sample Memorandum of Understanding Repatriation [Reserved]

Appendix E to Part 10—Sample Memorandum of Understanding Intentional Excavation [Reserved]

Dated: January 13, 1993.

Mike Hayden,

Assistant Secretary for Fish and Wildlife and Parks.

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